

REPRESENTATIVE FOR PETITIONER:
Tony L. Hiles, Vice President of Von Incorporated

REPRESENTATIVE FOR RESPONDENT:
Julie Newsome, Huntington County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Tony L. Hiles	)	Petition No.:	35-005-11-3-5-82425-15
)		
Petitioner,	)	Parcel No.	35-05-14-100-182.400-005
)		
v.	)	County:	Huntington
)		
Huntington County Assessor,	)	Township:	Huntington
)		
Respondent.	)	Assessment Year:	2011

Appeal from the Final Determination of the
Huntington County Property Tax Assessment Board of Appeals

February 13, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. Is Petitioner able to challenge the subject parcel's value, the application of an influence factor, or size of the basement on a Form 133 petition? And if so, did Petitioner prove the subject parcel's assessment is incorrect?

PROCEDURAL HISTORY

2. Petitioner initiated a 2011 assessment appeal by filing a Petition for Correction of an Error ("Form 133") with the Huntington County Auditor on May 8, 2015. On October 16, 2015, the Huntington County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination reducing the size of the basement by 130 square feet and adding a crawl space of 130 square feet, but sustaining the property's assessed value. On December 8, 2015, Petitioner filed the Form 133 appeal with the Board.
3. Dalene McMillen, the Board's designated administrative law judge, held a hearing on November 15, 2016. Neither she nor the Board inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The following people were sworn and testified:¹

Tony L. Hiles, Vice President of Von Incorporated
Julie Newsome, Huntington County Deputy Assessor.

5. Petitioner offered the following exhibits:

Petitioner Exhibit 1 – Partial property record card ("PRC"),

¹ Terri Boone, Huntington County Assessor, was sworn but did not testify.

Petitioner Exhibit 2 – Partial corrected PRC,
Petitioner Exhibit 3 – Partial PRC,
Petitioner Exhibit 4 – Two exterior photographs of the subject property,
Petitioner Exhibit 5 – Chapter 2 – page 47 of the Real Property Assessment Guidelines (“Guidelines”),
Petitioner Exhibit 6 – Petitioner’s description of the subject property,
Petitioner Exhibit 7 – Value opinion letter prepared by Stephen Ness of Realliving Ness Bros. Real Estate & Auction Co.,
Petitioner Exhibit 8 – Value opinion email prepared by Joanie Veach.

6. Respondent offered the following exhibits:

Respondent Exhibit 1 – Form 133 petition,
Respondent Exhibit 2 – 2011 PRC,
Respondent Exhibit 3 – Department of Local Government Finance (“DLGF”) memorandum “Legislative Changes Affecting the Correction of Error Appeal,” dated May 7, 2014 and Indiana Code § 6-1.1-15-12.

7. The following additional items are part of the record:

Board Exhibit A – Form 133 petition,
Board Exhibit B – Hearing notice,
Board Exhibit C – Hearing sign-in sheet.

8. The subject property is a single-family home with a utility shed located at 237 Lindley Street in Huntington.

9. The assessed value for 2011 is \$6,400 for the land and \$3,200 for the improvements, for a total of \$9,600.

10. The Form 133 claims the following assessed value for 2011, \$2,000 for the land and \$1,200 for the improvements, for a total of \$3,200.

PETITIONER'S CONTENTIONS

11. Petitioner argued that a negative influence factor should be applied to the land and that assessment standards were not properly followed in valuing the land. Specifically, Petitioner argues that this parcel suffers from limited access in that it lacks a driveway and a sidewalk, has no public utilities, and has certain adverse topography and elevation issues. *Hiles testimony; Pet'r Ex. 4 - 6.*
12. Petitioner pointed out what it contends is an error on the PRC. Petitioner contends that the PRC shows 130 square feet of crawl space even though there is no crawl space. Petitioner also contends that the PRC shows the basement area was changed, however, it fails to show what year that change took effect. He does not believe the changes were in effect for the 2011 assessment year. *Hiles testimony; Pet'r Ex. 1 & 2.*
13. Petitioner presented an opinion of value prepared by Stephen Ness of Realliving Ness Bros. Real Estate & Auction Co. The letter was dated November 21, 2013. The letter indicated that the home includes one-story consisting of 706 square feet that has been vacant for a number of years and is in need of extensive repair before it could be used for a home. Mr. Ness estimated the property's value at \$3,500. *Hiles testimony; Pet'r Ex. 7.*
14. Petitioner also presented an opinion of value sent via email prepared by Joanie Veach, dated November 21, 2013. Ms. Veach has been a real estate broker since 1976. She based her opinion on comparable properties that sold in 2011 that were in close proximity to the subject property. She indicated the subject property was uninhabitable with a land value of \$3,400 and improvement value of \$1,800, for a total value of \$5,200. *Hiles testimony; Pet'r Ex. 8.*
15. Finally, Petitioner disputed Respondent's argument regarding the timeliness of his Form 133 petition filing. Petitioner testified that for the 2011 assessment year the taxes were first due on May 10, 2012, therefore the deadline to file the Form 133 petition was May

10, 2015. He filed his petition on May 8, 2015, and thus argues it was timely filed. *Hiles testimony*.

RESPONDENT'S CONTENTIONS

16. Respondent contends Petitioner's Form 133 was not timely filed. The 133 petition was received by the Auditor's office on May 8, 2015. However, Respondent contends that correction of error forms relating to the 2011 assessment were required to be filed by May 10, 2014. *Newsome testimony; Resp't Ex. 1 & 3.*
17. Further, Ind. Code § 6-1.1-15-12 was amended to mirror Ind. Code § 6-1.1-26-1, whereby a person is allowed to seek a refund of a tax payment within three years after the taxes were first due. *Newsome testimony; Resp't Ex. 3.*
18. In addition, according to Ind. Code § 6-1.1-15-12, Respondent contends that a taxpayer may only correct objective errors via a Form 133 petition. The Form 133 petition cannot be used to petition for changes that require subjective judgment. Here, Respondent contends that Petitioner has raised subjective issues "influenced by personal feelings." *Newsome testimony; Resp't Ex. 1 & 2.*

Analysis

19. Petitioner seeks to correct alleged errors in the 2011 assessment via the Form 133 petition, which the DLGF has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12. However, only objective errors that can be corrected with exactness and precision can be addressed with a Form 133 petition.² These forms are not for changes that require subjective judgment. Ind. Code § 6-1.1-15-12; *O'Neal Steel v.*

² Additionally, Petitioner cannot avoid the statutory time limitations associated with the Form 131 review process by filing its claim on a Form 133 petition. *See Williams Indus. v. State Bd. Of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (stating that because the legislature has created specific appeal procedures, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner). *See also Lake County Prop. Tax Assessment Bd. Of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1236-37 (Ind. 2005) (stating that because the taxpayer failed to challenge its assessments within the applicable time period for which a Form 130 was available, it was foreclosed from using a Form 133 for that purpose).

Vanderburgh Co. Property Tax Assessment Bd. Of Appeals, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003); *Barth Inc. v. State Bd. Of Tax Comm'rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Bender v. State Bd. Tax Comm'rs*, 676 N.E.2d at 1114 (Ind. Tax Ct. 1997); *Reams v. State Bd. Of Tax Comm'rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. Of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).

20. A determination is objective if it hinges on simple, true or false findings of fact. *See Bender*, 676 N.E.2d at 1115. “[W]here a simple finding of fact does not dictate the result or discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.*
21. The Board first turns to the questions of whether Petitioner timely filed the Form 133 petition and whether a Form 133 can be used to correct the issues the Petitioner raised.
22. On March 26, 2014, House Enrolled Act 1266 (“HEA 1266”), Section 19 amended Ind. Code § 6-1.1-15-12 regarding the time for filing a Form 133 petition. The change was effective upon passage. Ind. Code § 6-1.1-15-12, as amended, states a taxpayer is not entitled to the remedies available through a Correction of Error unless the taxpayer files the appeal: (1) with the auditor of the county in which the taxes were originally paid; and (2) within three years after the taxes were first due. P.L. 183-2014; SEC. 19; I.C. § 6-1.1-15-12(i) (2014). The evidence shows the Form 133 filing was timely for this case.
23. The Petition to Correct Error Statute, however, does not expressly grant the right to a tax refund. A separate statute, Ind. Code § 6-1.1-26-1, provides an avenue for a taxpayer to claim a refund. The statute provides that a claim for refund must be filed within three years after the taxes were first due. Ind. Code § 6-1.1-26-1(2). Here, the record is silent about whether Petitioner filed a claim for refund. Petitioner failed to offer any evidence about filing a claim for a refund. Therefore, even if he is entitled to some correction of an error, he would not be entitled to a refund if no refund was claimed within the time allowed by statute.

24. Petitioner argues that a negative influence factor should be applied to the land, that assessment standards were not properly followed, that the structure does not have a crawl space, that the size of the basement is incorrect, and to some extent, that the parcel's assessed value is incorrect. Clearly, some of these challenges require subjective judgment. For example, subjective judgment is required to apply influence factors. Individual parcels within a neighborhood may have peculiar conditions that are not reflected in the base rate of the land. Assessors use influence factors to account for how those conditions affect an individual parcel's value. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 43. Influence factors cannot be addressed with a Form 133.
25. Petitioner testified the home was assessed with 130 square feet of crawl space and 576 square feet of basement; however, the home has no crawl space and that basement square footage was incorrect. He also testified it was unclear when Respondent corrected these errors and for what year the correction became effective.
26. The PTABOA's decision on the other hand states that the "dwelling" was "sound" valued at \$3,200. The PTABOA decision says the basement size was reduced by 130 square feet and a 130 square foot crawl space was added. But Respondent's PRC (printed November 3, 2016) shows the house was assessed with a basement of 706 square feet and no crawl space. Ultimately, the evidence is unclear about the basement/crawl space data for the 2011 assessment.
27. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. See *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis"). Here, Petitioner alleged errors, but failed to produce detailed evidence to prove any specific correction should be required. Thus, Petitioner failed to make a prima facie case.

28. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

29. The Board finds for Respondent and orders no change.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.